

Chapter 21.28 WIRELESS COMMUNICATIONS

21.28.010 Purpose.

The purpose of this chapter is to provide regulations regarding the location and design of wireless communications facilities. This chapter is intended to ensure that the installation of wireless communication facilities will not be detrimental to the city's public health, safety or welfare and to establish standards, timelines, and criteria, in accordance with applicable state and federal regulations, including, without limitation, to be consistent with the Telecommunications Act of 1996, 42 U.S.C. Sections 151 et seq., for the orderly development and siting of wireless communication facilities in the city; Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, applicable state laws, and administrative and court decisions and determinations relating to the same. It is the intent of the chapter to treat wireless communications facilities, including antennas, in the same way that other mechanical equipment (e.g., air conditioners) are treated, and to require screening and architectural compatibility. (Ord. 1523 § 4, 2017)

21.28.020 Definitions.

The following definitions shall apply in this chapter:

“Antenna” means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

“Associated equipment” means all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, shelters, radio transceivers, regular power supply units, and wiring, to which a wireless antenna is attached to facilitate mobile broadband service and personal wireless service delivered on mobile broadband devices.

“Base station” means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment located on a tower. Base station includes, without limitation:

- (a) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems (“DAS”) and small-cell networks).
- (c) Any structure other than a tower that, at the time the relevant application is filed with the city under this section, supports or houses equipment described in subsections (a) and (b) above and has been previously reviewed and approved by the city.

“Collocation” means the mounting or installation of transmission equipment on an eligible support structure to transmit and/or receive radio frequency signals for communications purposes which antennas are owned or operated by more than one public or private entity and includes the mounting or installation of additional wireless transmission equipment at an existing wireless facility.

“Data collection unit” or “DCU” means a wireless telecommunication facility comprised of a collection unit, a solar panel and whip antennas used for receiving and/or transmitting wireless signals from distributed gas and water data collector meters, which is a stand-alone facility not connected via fiber optic or other physical wiring to any other facility. No wireless telecommunications facility operated by an electric corporation, a telephone corporation, a personal wireless service provider, a commercial mobile service provider or a mobile telephone service provider shall be considered a DCU.

Size: Solar panels not larger than seven square feet, whip antennas not longer than forty inches, and collections units not larger than one and one-half cubic feet. DCUs shall be designed to blend into the surrounding environment and minimize the visual appearance by matching the color of the poles or buildings where the DCU is located.

“Distributed antenna system” or “DAS” means a network of one or more antennas and related fiber optic nodes typically mounted to or located at streetlight poles, utility poles, sporting venues, arenas or convention centers which provide access and signal transfer for wireless service providers. A distributed antenna system also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with one or more wireless service provider's facilities to provide the signal transfer services.

“Eligible facilities request” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(3), as may be amended, which defines that term as “any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.”

“Eligible support structure” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(4), as may be amended, which defines that term as “any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.”

“Existing” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(4), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC’s Section 6409(a) regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

“FCC” means the Federal Communications Commission or successor agency.

“Micro wireless facility” means a small cell that is no larger than twenty-four inches long, fifteen inches in width, twelve inches in height, and that has an exterior antenna, if any, no longer than eleven inches.

“Public right-of-way” means the area across, along, beneath, in, on, over, under, upon and within the dedicated public streets, roads, sidewalks, alleys, and waterways within the city, as they now exist or hereafter will exist, including unimproved areas that have been dedicated for public street purposes. Public right-of-way does not include public utility easements dedicated to the city outside dedicated public streets, roads, sidewalks, alleys, waterways within the city, parks, city facilities, and city owned infrastructure.

“RF” means radio frequency on the radio spectrum.

“Small cell” means a wireless telecommunications facility, as defined in paragraph (2) of subdivision (d) of Section 65850.6, or a wireless facility that uses licensed or unlicensed spectrum and that meets the following qualifications:

- (a) The small cell antennas on the structure, excluding the associated equipment, total no more than six cubic feet in volume, whether an array or separate.
- (b) Any individual piece of associated equipment on pole structures does not exceed nine cubic feet.
- (c) The cumulative total of associated equipment on pole structures does not exceed twenty-one cubic feet.
- (d) The cumulative total of any ground-mounted equipment along with the associated equipment on any pole or nonpole structure does not exceed 35 cubic feet. The following types of associated ancillary equipment are not included in the calculation of equipment volume:
 - (1) Electric meters and any required pedestal.
 - (2) Concealment elements.
 - (3) Any telecommunications demarcation box.
 - (4) Grounding equipment.
 - (5) Power transfer switch.
 - (6) Cutoff switch.
 - (7) Vertical cable runs for connection of power and other services.
 - (8) Equipment concealed within an existing building or structure.
- (e) “Small cell” includes a micro wireless facility. “Small cell” does not include the following:
 - (1) Wireline backhaul facility, which is defined to mean a facility used for the transport of communications data by wire from wireless facilities to a network.
 - (2) Coaxial or fiber optic cables that are not immediately adjacent to or directly associated with a particular antenna or collocation.
 - (3) The underlying vertical infrastructure.

“Spectrum Act” means Section 6409(a) of the Middle-Class Tax Relief Act and Job Creation Act of 2012, 47 U.S.C. Section 1455(a) (providing, in part, “... a state or local government may not deny, and shall approve, any eligible facilities request for a modification of any existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”)

“Stealth” means any wireless telecommunications facility that is architecturally integrated into a building or other concealing structure, such that no portion of any antenna, antenna equipment, or any other apparatus associated with the function of the facility is visible. The concealing structure shall have an aesthetically pleasing architectural design which fits into the context of its surroundings.

“Substantial change” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(7), as may be amended, which defines that term differently based on the particular facility type and location. For clarity, the definition in this chapter organizes the FCC’s criteria and thresholds for a substantial change according to the facility type and location.

- (a) For towers outside the public rights-of-way, a substantial change occurs when:

- (1) The proposed collocation or modification increases the overall height more than ten percent or the height of one additional antenna array not to exceed twenty feet (whichever is greater);
- (2) The proposed collocation or modification increases the width more than twenty feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater);
- (3) The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
- (4) The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
 - (b) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
 - (1) The proposed collocation or modification increases the overall height more than ten percent or ten feet (whichever is greater);
 - (2) The proposed collocation or modification increases the width more than six feet from the edge of the wireless tower or base station;
 - (3) The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets;
 - (4) The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent larger in height or volume than any existing ground-mounted equipment cabinets; or
 - (5) The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
 - (c) In addition, for all towers and base stations wherever located, a substantial change occurs when:
 - (1) The proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the planning/building director.
 - (2) The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

Note: The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

“Tower” means any structure built for the sole or primary purpose of supporting any FCC-licensed or -authorized antenna, including any structure constructed for wireless communications service. This term does not include a base station.

“Transmission equipment” means equipment that facilitates transmission of any FCC-licensed or -authorized wireless communication service.

“Vertical infrastructure” means all poles or similar facilities owned or “controlled” by the city that are in the public rights-of-way or public utility easements and meant for, or used in whole or in part for, communications service, electric service, lighting, traffic control, or similar functions.

- (a) For purposes of this subsection, the term “controlled” means having the right to allow subleases or sublicensing.

“Wireless telecommunication(s) facilities,” “wireless communication(s) facility,” “wireless facility,” or “facility” means any device or system for transmitting and/or receiving electromagnetic signals, including, but not limited to, radio waves and microwaves for cellular technology, personal communication services, mobile services, paging systems and related technologies. Facilities include towers, freestanding facilities, ground-mounted facilities, roof-top facilities, utility poles, transmitters, microwave dishes, antennas and parabolic antennas, small cells, macro and micro cells, DAS, DCU, all other types of equipment used in transmitting or receiving signals, antenna structures, associated buildings, base stations, emergency power systems or cabinets which house support equipment, and other accessory development.

Exclusions: The term “wireless telecommunications facility” does not apply to the following:

- (a) Government owned and operated telecommunications facilities.
- (b) Emergency medical care provider-owned and operated telecommunications facilities.
- (c) Mobile services providing public information coverage of news events of a temporary nature.
- (d) Any wireless telecommunications facilities exempted from this code by federal law or state law. (Ord. 1523 § 4, 2017)

21.28.030 Procedures.

To the extent necessary by federal or state law, the appropriate criteria and burden of proof and production shall be applied as an overlay with all other criteria:

- (a) The city may deny a wireless telecommunications facility if a site is inadequate for the facilities or the placement, construction, or modification of the equipment will adversely affect the property or surrounding neighborhood;
- (b) If the city denies an application for a wireless telecommunications facility, it must not discriminate against a provider;
- (c) The provider shall bear the burden of production and proof that the city discriminated;
- (d) The city must not effectively prohibit or create a significant gap in service;
- (e) It is the provider's burden to show that the city created a significant gap or effectively prohibited service, and the provider must demonstrate that the proposed facility is the least intrusive means necessary to provide the service;
- (f) The city may not deny a wireless telecommunications facility because of radio frequency effects that are in compliance with federal law; and
- (g) The city may regulate right-of-way facilities, which may be subject to an administrative wireless permit, a master deployment plan permit, an encroachment permit, a building permit and a license agreement. (Ord. 1523 § 4, 2017)

21.28.040 General provisions for wireless communication facilities on public and private property.

All wireless telecommunication facilities shall be in compliance with the following standards:

- (a) General. Antennas allowed by this chapter shall comply with all applicable zoning and building codes.
- (b) Wireless telecommunications facilities are allowed in compliance with Section 21.10.030 (Commercial and manufacturing district land uses and permit requirements) of this title and also in areas governed by specific plans.
- (c) Wireless telecommunication facilities are allowed on church properties in the R1 zone subject to FVMC Section 21.28.040(h).
- (d) Wireless telecommunication facilities are allowed on school properties and parks in the Public Institution and Open Space zone.
- (e) Public right-of-way antennas and wireless telecommunications facilities shall be allowed in the public right-of-way subject to Section 21.28.100.
- (f) Ten-Year Review. Allowed antennas and wireless telecommunication facilities shall be reviewed ten years from their approval date in order to review new technologies.
- (g) Visual Impact. Wireless telecommunication facilities shall be located, installed and mounted in a manner to minimize, to the greatest extent possible, the visibility of the antennas and equipment.
- (h) Nonexclusive Condition. Wireless telecommunication facilities on private property shall be conditioned to be nonexclusive in order to encourage collocation with separate providers.
- (i) Screening. Antennas and accessory wireless equipment, if visible, shall be screened with a solid wall and/or landscaping to the greatest extent possible. The base shall be landscaped to screen equipment cabinets or the equipment cabinets shall be architecturally compatible with adjacent buildings. All landscaping screening shall be required to be maintained and replaced if necessary by the applicant or property owner as long as the associated antenna or wireless equipment is in use.
- (j) Stealthing. All wireless telecommunications facilities shall be stealth unless exempted by federal or state law. Stealthing shall include concealment of any component of the wireless facility. Examples include, but are not limited to, "monopines," flagpoles or windmills designed to conceal wireless communication equipment and those applications where wireless communication equipment is contained within another structure such as a scoreboard or sign. Wireless communication facilities in the public right-of-way shall be subject to the requirements of Section 21.28.100. A wireless communications facility that is not fully assimilated to its surroundings shall be prohibited.
- (k) Change of Ownership. Notice of change of ownership shall be provided to the city. Lawfully constructed wireless telecommunication facilities that are no longer in operation shall be removed promptly from the premises ninety days after the discontinuation of the facility.
- (l) Indemnification. The applicant shall agree to indemnify, hold harmless and defend the city, its officers, agents and employees from any and all liability or claims that may be brought against the city arising out of its approval of a conditional use permit, encroachment permit or any other approval of a facility.
- (m) Signage Prohibited. Signage shall be prohibited on wireless telecommunications facilities unless required by federal, state or local law. (Ord. 1523 § 4, 2017)

21.28.050 Special standards for freestanding, ground-mounted wireless communications facilities on private property.

(a) Proximity to Other Ground-Mounted Structures/Collocation. No new ground-mounted structure for an antenna shall be located within five hundred feet of an existing ground-mounted structures for an antenna except if the new structure is replacing the existing structure for purposes of locating more than one wireless telecommunication facility on the structure (collocation).

(b) Collocation Feasibility. If collocation is not feasible due to the height restrictions specified in the code, height restrictions may be increased for the collocation provided the commission determines that the structure at the increased height will have less of an adverse visual impact on the surrounding area than two structures of reduced height located in close proximity to one another and will be consistent with the character of the surrounding development.

(c) Freestanding wireless telecommunications facilities shall be set back from arterial streets and major traffic corridors to the greatest extent possible. Freestanding wireless telecommunication facilities or antennas shall be painted to match the background or existing and surrounding structures.

(d) Freestanding wireless telecommunication facilities shall be set back at least one hundred feet from any parcel with residential uses. The one-hundred-foot setback may be reduced subject to review and approval by a conditional use permit.

(e) Height. The height of any freestanding wireless telecommunications facility shall not exceed the maximum height of the designated zoning district.

(f) Alternative Site Analysis. All applicants for new freestanding facilities shall be required to submit an alternative site analysis, unless determined unnecessary by the planning/building director. A statement from the applicant that demonstrates that alternative locations, configurations, and facility types have been examined shall be provided. The alternative site analysis shall address in narrative form the feasibility of any alternatives that may have fewer adverse effects on adjacent properties than the facility configuration and location proposed including, but not limited to:

- (1) Height;
- (2) Mass and scale;
- (3) Materials and color;
- (4) Illumination; and
- (5) Information addressing the following items:
 - (A) The extent of any commercial development within the geographic search area of the proposed facility,
 - (B) The proximity of the structure to any residential dwellings,
 - (C) The proximity of the structure to any public buildings or facilities,
 - (D) The existence of tall and like structures within the geographic search area of the proposed structure.

(g) Security Fencing. All security fencing shall be of a material, color and design that blends with the character of the surrounding environment. (Ord. 1523 § 4, 2017)

21.28.060 Special standards for roof-top mounted facilities.

(a) Roof-top wireless telecommunications facilities shall be appropriately screened from view with a façade which compliments the architecture of the building to create a balanced integrated edge treatment.

(b) The height of any new architectural screening shall not exceed the maximum height limit for that zone.

(c) Associated equipment buildings or enclosures shall be architecturally consistent with the building where the roof-top antennas are located, such as having similar exterior style and finish. Equipment for roof-top facilities may also be located within the building on which the antennas are mounted. (Ord. 1523 § 4, 2017)

21.28.070 Satellite dishes on private property.

(a) Satellite Dishes in Residential Zones. Satellite dishes in residential zones shall be maintained in compliance with the following criteria:

(1) Location. For ground-mounted dishes, the satellite dish shall be located in the rear yard area of the residence and shall not encroach into any area that is within five feet from a lot line. Roof mounting shall be prohibited.

(2) Height. The height of the satellite dish and all appurtenant equipment shall not exceed twelve feet four inches as measured from the adjacent ground.

- (3) Diameter. The diameter of the dish shall not exceed ten feet.
- (4) Screening. The satellite dish shall be screened from public view from adjacent streets and surrounding property using fences, hedges or other vegetation.
- (5) Development Review. The satellite dish shall be subject to development review by the planning/building director to ensure that the installation complies with these standards and will not have an adverse impact upon nearby properties.
- (6) Building Permits. All appropriate building permits shall be obtained prior to installation.
- (b) Satellite Dishes in Commercial or Industrial Zones. Satellite dishes in all commercial or industrial zones, or in any other nonresidential zones, shall comply with the following criteria:
 - (1) Height. The height of the satellite dish and all appurtenant equipment shall not exceed twelve feet four inches as measured from the ground. Notwithstanding the foregoing, roof mounting will be allowed if the commission makes the determination after development review that the proposed dish will be visually unobtrusive.
 - (2) Diameter. The diameter of the dish shall not exceed ten feet.
 - (3) Screening. The satellite dish shall be screened from public view from adjacent streets and surrounding property using fences, hedges or other vegetation.
 - (4) Development Review. A roof-mounted satellite dish that is not fully stealth shall be subject to development review by the commission; any other satellite dish will be subject to development review by the planning/building director.
 - (5) Building Permits. All appropriate building permits shall be obtained prior to installation. (Ord. 1523 § 4, 2017)

21.28.080 Satellite exceptions.

- (a) Small Dish. The provisions contained in subsections (a) and (b) of Section 21.28.070 of this chapter shall not apply to any satellite dish that is:
 - (1) 1.1 meter (39.37 inches or less) and located in a residential zone; or
 - (2) 2.2 meters (78.74 inches or less) and located in a commercial/industrial zone.
- (b) Satellite Dish Hardship. An applicant may be granted a hardship exception from subsections (a) and (b) of Section 21.28.070 if the commission determines that:
 - (1) The strict application of those standards will impose an unreasonable limitation on the applicant's ability to receive satellite signals; or
 - (2) The costs of compliance are excessive relative to the purchase and installation costs of the satellite equipment.
- (c) Nonconforming Satellite Dish Structures. A satellite dish and appurtenant equipment that were lawfully established and in compliance with all applicable ordinances and laws at the time of their construction, but which are now nonconforming to the provisions of this title shall be deemed a lawful nonconforming structure and shall be allowed until terminated through abandonment, dilapidation, obsolescence or destruction. (Ord. 1523 § 4, 2017)

21.28.090 Review and approval of facilities on private property.

- (a) Administrative Permit. Wireless communications facilities that are fully assimilated to surroundings, or collocated on an existing antenna-supporting structure, may be approved with an administrative permit. The purpose of the administrative wireless communication facilities permit is to provide planning/building director review of wireless communication facilities to ensure they meet the intent of the development code and the general plan.
 - (1) Administrative Permit Procedure.
 - (A) An application for an administrative wireless communication facilities permit should be filed with the planning department. Application fees for said permit shall be set by a separate resolution.
 - (B) The planning/building director will make a decision regarding a completed application within sixty calendar days of receipt. This decision will be final twenty days following the date of the decision unless an appeal is filed in compliance with Fountain Valley Municipal Code Chapter 21.60. A letter will be provided to the applicant describing the decision and any conditions of approval applicable to the project.
 - (C) The planning/building director may refer a request to the planning commission when the planning/building director determines that the project's complexity or the public interest warrants the referral.
 - (b) Conditional Use Permit. New freestanding wireless communication facilities that are not collocated on existing structures (i.e., new towers), or proposed substantial changes (not meeting the definition of an eligible facilities request) to facilities that were

previously approved through a conditional use permit, require approval of a conditional use permit in compliance with Chapter 21.36 of this title.

(1) Public Hearing. Any permit application under this chapter subject to planning commission approval shall require notice and a public hearing. Notice of such hearing shall be provided in accordance with Chapter 21.58. The planning commission may approve, or conditionally approve, an application only after it makes the findings required in subsection (e).

(c) No discretionary permit is required for changes to existing telecommunications facilities that qualify as an eligible facility request and do not qualify as a substantial change.

(d) Timeframe for Review.

(1) The city acknowledges federal and state shot clocks which may apply to a proposed wireless communication facility. That is, federal and state law provide time periods in which the city must approve or deny a proposed wireless communication facility. As such, the applicant is required to provide the city written notice of the expiration of any shot clock, which the applicant shall ensure is received by the city (e.g., overnight mail) no later than twenty days prior to expiration.

(2) All final decisions made pursuant to this chapter shall be in writing and based on substantial evidence in the written administrative record. The written decision shall include the reasons for any denial. The planning/building director may approve, or conditionally approve, an application only after the planning/building director makes the findings required in subsection (e). Within five business days after the planning/building director makes a final decision on an application under this chapter, the planning/building director shall provide notice.

(e) Findings. Approval of a wireless telecommunication facility shall require the following findings be made. These are in addition to any applicable sections or criteria outlined in this code. The planning commission or planning/building director shall determine that:

(1) There is adequate space on the property for the antenna and accessory wireless equipment without conflict with existing structures on the property, or reducing required parking, landscaping or other development standards;

(2) The design and placement of the antenna and accessory wireless equipment will not adversely impact the use of the property, other structures located on the property or the surrounding area or neighborhood;

(3) The antenna and accessory wireless equipment as proposed are consistent with the intent of this chapter and comply with the general standards for wireless telecommunication facilities and any special standards below; and

(4) The public right-of-way will not be adversely impacted and, for small cells, the proposed wireless telecommunications facility will comply with the adopted Small Cell Standards and Guideline Policy.

(f) Conditions of Approval. Conditions of approval may be imposed on any permit and architectural approval granted in compliance with this chapter. Permits shall not become effective until all applicable conditions of approval have been met. All conditions of approval shall be observed throughout the duration of the permit. Conditions shall include, but shall not be limited to, the following:

(1) Indemnification. The applicant shall agree to indemnify, hold harmless and defend the city, its officers, agents and employees from all liability or claims that may be brought against the city from its approval of a permit.

(2) Terms of Lease. A letter outlining the parties, contact information and term of the lease, license or other agreement with the property owner shall be submitted to the city prior to issuance of a building permit for the facility. If the lease, license or agreement is extended or terminated, notice and evidence thereof shall be provided to the planning/building director. Upon termination or expiration of the lease, the use permit for the facility shall be cancelled and the facility removed within ninety days.

(3) Change of Ownership. Notice of change of ownership of the facility shall be provided to the city.

(4) Noise Study. A noise study may be required subject to the determination by the planning/building director. A noise study shall be prepared and certified by an engineer for the proposed facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators demonstrating compliance with the city's noise regulations. The noise study must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

(5) Changes and Modifications. All changes and modifications to an approved facility shall require prior approval by the city.

(6) Vandalism Repair. All graffiti and other forms of vandalism shall be promptly removed and/or repaired within twenty-four hours of notification. (Ord. 1523 § 4, 2017)

21.28.100 Small cell facilities in the public right-of-way.

(a) All small cells that are located within the public right-of-way shall be designed, maintained, planned, located, and erected in accordance with the adopted Small Cell Standards and Guidelines Policy for wireless communication facilities in the public right-of-way.

(b) Wireless equipment designated as “small cell” shall be permitted within the public right-of-way and locations zoned for wireless telecommunications facilities within the city as long as they comply with all applicable state and federal laws including the Federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and all applicable health and safety requirements, including Public Utilities Commission General Order 95.

(c) Small cell deployment in the public right-of-way shall be consistent with Sections 7901 and 7901.1 of the [Public Utilities Code](#).

(d) The provider may be required to submit additional information showing that the small cell complies with the Federal Communications Commission’s regulations concerning radio frequency emissions referenced in Section 332(c)(7)(B)(iv) of Title 47 of the United States Code.

(e) Small cell deployment shall comply with all applicable building codes, including building code structural requirements and all feasible design and collocation standards.

(f) Deployment of small cell technology shall be expedited in a manner that advances technological and competitive neutrality.

(g) Permitting.

(1) Permits shall grant providers fair, reasonable, nondiscriminatory, and nonexclusive access to city owned streetlights and other suitable host infrastructure located within the public rights-of-way and in other local public places such as stadiums, parks, campuses, hospitals, transit stations, and public buildings.

(2) Small cells shall be approved pursuant to an administrative permit or master deployment plan permit, an encroachment permit, a building permit and a license agreement.

(A) Administrative permits shall be reviewed and approved in compliance with Section 21.28.090.

(B) Master Deployment Plan Permit.

(i) Any applicant that seeks approval for five or more wireless communications facilities (including new facilities and collocations to existing facilities) may elect to apply for a master deployment plan permit subject to planning/building director approval. The proposed facilities in a master deployment plan shall be reviewed together at the same time and subject to the same requirements and procedures applicable to an administrative wireless facilities permit. Application fees for said permit shall be set by a separate resolution.

(ii) A master deployment plan permit shall be deemed an approval for all wireless telecommunications facilities within the plan; provided, however, that an individual encroachment permit, building permit, and license agreement shall be required for each wireless telecommunications facility. A single master license agreement may also be permitted when associated with a master deployment plan permit.

(iii) After the planning/building director approves a master deployment plan permit, any deviations or alterations from the approved master deployment plan for an individual wireless telecommunications facility shall require an administrative wireless telecommunications facilities permit, as applicable.

(3) Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended, whether embedded or attached, on communication cables or lines that are strung between existing utility poles in compliance with state safety codes are exempt from these requirements.

(4) The applicable permit may be rescinded if construction is not substantially commenced within one year, absent a showing of good cause. The applicant may not renew the permit or resubmit an application to develop a small cell at the same location for six months from date of rescission.

(5) Permits shall be renewed as long as the site maintains compliance with use conditions adopted at the time the site was originally approved.

(6) Small cells no longer used to provide service shall be removed by the last known owner of record of such facility, at the sole cost of said owner.

(7) The city may adopt a resolution to reserve capacity for future city uses on vertical infrastructure based on substantial evidence in the record.

(8) Existing agreements regarding the leasing or licensing of vertical infrastructure entered into before the operative date of this section remain in effect, subject to applicable termination provisions.

(9) Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required permits or other approvals from the city, state, or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of required permits or other approvals from city, state or federal agencies.

(h) Permitting Fees and Associated Charges.

(1) Administrative permit fees, master deployment plan permit fees, encroachment permit fees, and building permit fees shall be set by a separate resolution.

(2) An annual charge, developed consistent with all applicable state and federal law shall be determined based on multiplying the percentage of the total usable space that would be occupied by the attachment by the annual costs of ownership of the vertical infrastructure and its anchor, if any.

(3) A one-time reimbursement fee for actual costs incurred by the city for rearrangements performed at the request of the small cell provider.

(4) The provider shall pay all electricity costs associated with the small cell installation and operation.

(i) Inspection and reporting. The owner of the wireless communication facility, when directed by the city, must perform an inspection of the facility and submit a report to the public works department on the condition of the system to include any identified concerns and corrective action taken. Additionally, as city crews perform maintenance on city infrastructure they may identify maintenance concerns. These will be reported to the owner of the facility. The city shall give the applicant thirty days to correct the identified maintenance concerns after which the city reserves the right to take any action it deems necessary, which may include revocation of the permit. The burden is on the permittee to demonstrate that it complies with the requirements herein. (Ord. 1523 § 4, 2017)

21.28.110 Enforcement.

The provisions of this chapter shall be enforced in compliance with the provisions of Chapter 21.64 (Enforcement Provisions) of this title. (Ord. 1523 § 4, 2017)

21.28.120 Violations of wireless communications regulations.

It is unlawful for any owner, operator, tenant or other person in control of property within the city for which the standards set forth in this chapter apply, to fail to comply with the provisions of this chapter. (Ord. 1523 § 4, 2017)

21.28.130 Permit term and expiration.

(a) Unless [Government Code](#) Section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten years, unless pursuant to another provision of the code it lapses sooner or is revoked. At the end of ten years from the date of issuance, such permit shall automatically expire.

(b) A permittee may apply for a new permit within one hundred eighty days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunication facilities. (Ord. 1523 § 4, 2017)

21.28.140 Removal and restoration.

(a) Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. The facility shall be removed from the property, at no cost or expense to the city.

(b) Removal of Facilities by City. The applicant shall submit a performance bond in an amount that is rationally related to the cost of the removal of the applicant's facilities, as determined by the city. In the event the city removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removed by the city due to exigent circumstances. (Ord. 1523 § 4, 2017)